



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,024	02/09/2004	Peter Dallinger	041165-9059-00	6953

23409 7590 04/09/2007  
MICHAEL BEST & FRIEDRICH, LLP  
100 E WISCONSIN AVENUE  
Suite 3300  
MILWAUKEE, WI 53202

EXAMINER

WILLIAMS, JAMILA O

ART UNIT	PAPER NUMBER
----------	--------------

3722

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/775,024

Applicant(s)

DALLINGER ET AL.

Examiner

Jamila Williams

Art Unit

3722

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All    b) ☐ Some \*    c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what is encompassed by the phrase "bay-like bulge", "funnel-like", "roof-like" and "rib-like".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

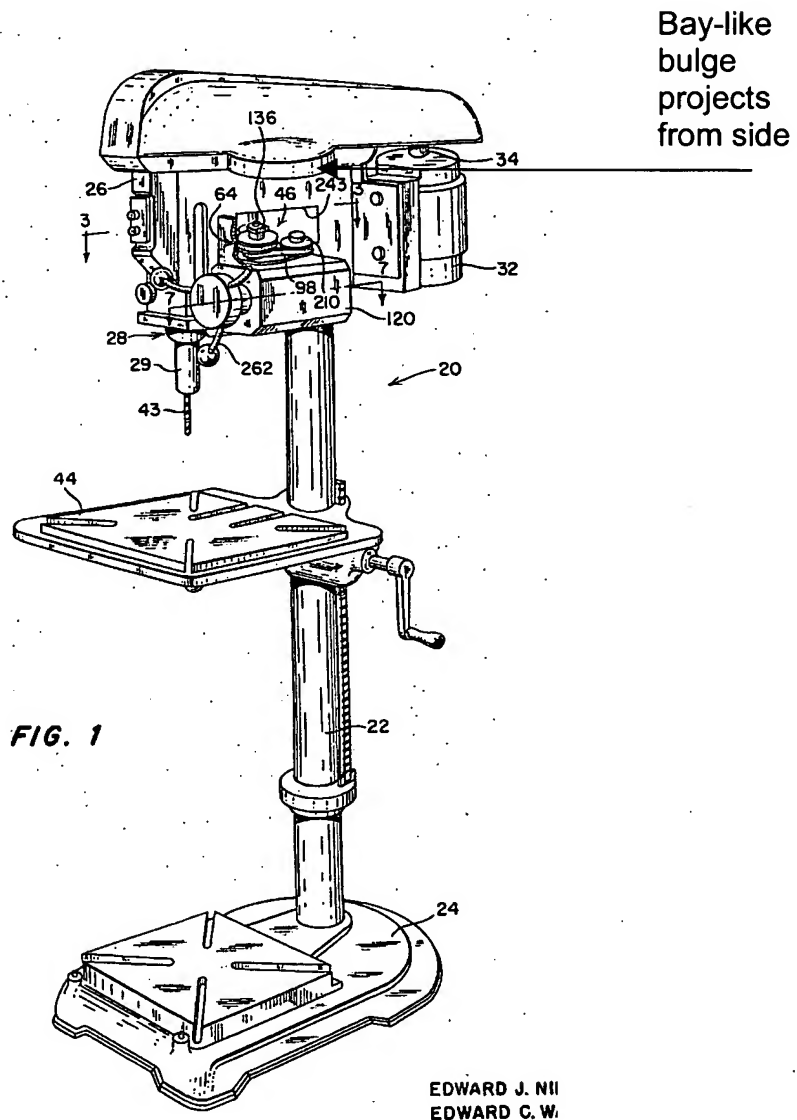
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,14 are rejected under 35 U.S.C. 102(b) as being anticipated by 3,314,312 to Niehaus, Jr et al (hereinafter Niehaus, Jr.).

Niehaus, Jr. discloses a drive unit (see figure below) having at least two drive wheels (22,23) being provided in a drive housing (26) and at least one endless drive (figure 2) guided around the wheels characterized in that the drive housing in the area of at least one of the drive wheels comprises at least one bay-like bulge which extending over a circumferential section of the drive wheel near the drive wheel,

Art Unit: 3722

wherein the at least one bay like bulge is provided at a side of the drive housing and is a projection projecting from the side (see arrows in the figure below)



Regarding claim 2, Neihaus discloses the bulge is provided at both longitudinal sides of the drive housing (see arrow in the figure above, although only one is shown

Art Unit: 3722

there is inherently a corresponding bulge on the opposite side to accommodate the drive wheel).

Regarding claim 3, Niehaus, Jr. discloses the bulge extends approximately arcuately near the drive wheel (see arrow in the figure above).

Regarding claim 14, Niehaus, Jr. discloses the bulge extends approximately arcuate near one of the drive wheels (see figure).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niehaus, Jr.

Niehaus, Jr. discloses all elements of the claims as applied to claim 1 but does not disclose the specific distance between the bulge and drive wheel.

Regarding the specific distance between the bulge and drive wheel, as recited in claims 6 and 15, it would have been obvious to one having ordinary skill in the art at the time the invention was made to alter the distance (i.e. between 5mm and 65mm; between about 8mm and about 28mm) since it has been held that where the general conditions of the claims are disclosed in the prior art discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller* 105 USPQ 233. It is noted on page 10 2<sup>nd</sup> paragraph of the specification that applicant has provided no criticality to this range.

Art Unit: 3722

Claims 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niehaus, Jr. Niehaus, Jr. discloses all elements of the claims but for the angle of the circumferential portion (between about 30° and about 130°, about 90°).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a circumferential portion between about 30° and about 130°, since it has been held that where the conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art.

*In re Aller*, 105 USPQ 233, especially since applicant gives no criticality to the range (page 10 1<sup>st</sup> paragraph of the specification).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a circumferential portion of about 90°, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980), especially since applicant gives no criticality to the value (page 10 1<sup>st</sup> paragraph of the specification).

### ***Allowable Subject Matter***

Claims 4,5,8-12 and 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 1/16/2007 have been fully considered but they are not persuasive.

Regarding the applicants use of the following: bay-like, rib-like, funnel-like, roof-like, it is not clear how the features being described are "like" a bay, rib, funnel, roof. It is noted from applicant's argument that the shape is being referenced with regards to the phrase "bay-like bulge". However the claims do not reflect this. If the shape is what is being referenced, the phrase --bay shaped--, would seem more appropriate. As the claims are presently drafted, the use of these phrases makes the scope unclear.

Niehaus, Jr. is being applied to show the bay-like bulge as claimed.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


Art Unit: 3722

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila Williams whose telephone number is 571-272-4431. The examiner can normally be reached on Monday-Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JW 3-23-2007

  
MONICA CARTER  
SUPERVISORY PATENT EXAMINER